



General Assembly

Amendment

February Session, 2014

LCO No. 4346

SB0024804346SR0

Offered by:

SEN. MCLACHLAN, 24th Dist.

To: Subst. Senate Bill No. **248**

File No. 517

Cal. No. 348

"AN ACT CONCERNING PUBLIC WORKS PROJECTS AND THE THRESHOLD FOR COMPETITIVE BIDDING, SUBCONTRACTOR PREQUALIFICATION, CONSTRUCTION MANAGER AT-RISK PROJECT DELIVERY CONTRACTS, THE HIRING OF CONSULTANTS AND THE PURCHASING OF CERTAIN PROPERTY AND SERVICES."

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. (NEW) (*Effective October 1, 2014*) Notwithstanding the
4 provisions of sections 4-37f to 4-37k, inclusive, of the general statutes,
5 any foundation as defined in section 4-37e of the general statutes, as
6 amended by this act, that is established for The University of
7 Connecticut (1) shall be considered a public agency as defined in
8 section 1-200 of the general statutes for purposes of the Freedom of
9 Information Act, as defined in section 1-200 of the general statutes, and
10 (2) shall be subject to audit by the Auditors of Public Accounts in
11 accordance with the provisions of section 2-90 of the general statutes.

12 Sec. 502. Section 4-37e of the 2014 supplement to the general statutes

13 is repealed and the following is substituted in lieu thereof (*Effective*
14 *October 1, 2014*):

15 As used in this section and sections 4-37f to 4-37j, inclusive, as
16 amended by this act:

17 (1) "State agency" means each state board, authority, commission,
18 department, office, institution, council or other agency of the state
19 including, but not limited to, each constituent unit and each public
20 institution of higher education.

21 (2) "Foundation" means an organization, fund or any other legal
22 entity which is (A) exempt from taxation pursuant to Section 501(c)(3)
23 of the Internal Revenue Code of 1986, or any subsequent
24 corresponding internal revenue code of the United States, as from time
25 to time amended, and (B) established for the principal purpose of
26 receiving or using private funds for charitable, scientific, cultural,
27 educational or related purposes that support or improve a state agency
28 or for coordinated emergency recovery purposes. [Such] Except as
29 provided in section 501 of this act, such an organization, fund or other
30 legal entity shall not be deemed to be a state agency or a public agency,
31 as defined in section 1-200.

32 (3) "Executive authority" means (A) a department head, as defined
33 in section 4-5, (B) the executive secretary or president of a constituent
34 unit, (C) the chief executive officer of a public institution of higher
35 education, and (D) the chief executive officer of any other state agency.

36 (4) "Constituent unit" means a constituent unit as defined in section
37 10a-1.

38 (5) "Public institution of higher education" means a public college or
39 university in the state system of higher education or The University of
40 Connecticut School of Law.

41 (6) "Coordinated emergency recovery" means the support and
42 improvement of state services affected by a natural disaster, act of

43 domestic terrorism, catastrophic event or other unforeseen emergency,
44 including, but not limited to, services provided by the Department of
45 Emergency Services and Public Protection and the Office of Victim
46 Services.

47 Sec. 503. Section 4-37f of the 2014 supplement to the general statutes
48 is repealed and the following is substituted in lieu thereof (*Effective*
49 *October 1, 2014*):

50 The executive authority of each state agency for which a foundation
51 is established shall, in accordance with a policy adopted by the board
52 of trustees of the constituent unit for each state agency which is a
53 constituent unit or which is a public institution of higher education
54 under the jurisdiction of the constituent unit, ensure that, or the
55 executive authority of each state agency for which a foundation is
56 established for the principal purpose of coordinated emergency
57 recovery shall ensure that:

58 (1) The foundation shall have a governing board to oversee its
59 operation;

60 (2) If the state agency is a constituent unit, the following persons
61 shall serve as nonvoting members of the governing board of the
62 foundation unless the bylaws of the foundation provide that they be
63 voting members: The executive authority of the constituent unit, or his
64 designee, a student enrolled at an institution under the jurisdiction of
65 the constituent unit, who shall be elected by the students enrolled at
66 the institutions under the jurisdiction of the constituent unit, and a
67 member of the faculty of any such institution, who shall be elected by
68 the faculty of the institutions under the jurisdiction of the constituent
69 unit. Elections pursuant to this subdivision shall be conducted in
70 accordance with procedures for such elections established by the board
71 of trustees of the constituent unit;

72 (3) If the constituent unit is the Board of Trustees of the
73 Community-Technical Colleges or the Board of Trustees of the
74 Connecticut State University System, the purposes of the foundation

75 shall be limited to providing funding for (A) scholarships or other
76 direct student financial aid, and (B) programs, services or activities at
77 one or more of the institutions within its jurisdiction;

78 (4) If the state agency is a public institution of higher education, the
79 following persons shall serve as nonvoting members of the governing
80 board of the foundation unless the bylaws of the foundation provide
81 that they be voting members: The executive authority of the
82 institution, or his designee, a student enrolled at the institution, who
83 shall be elected by the students enrolled in the institution and a
84 member of the faculty of the institution, who shall be elected by the
85 faculty of the institution. Elections pursuant to this subdivision shall be
86 conducted in accordance with procedures for such elections
87 established by the board of trustees of the constituent unit which has
88 jurisdiction over the institution;

89 (5) The governing board of the foundation shall annually file with
90 the state agency an updated list of the members and officers of such
91 board;

92 (6) The salaries, benefits and expenses of officers and employees of
93 the foundation shall be paid solely by the foundation;

94 (7) The foundation shall use generally accepted accounting
95 principles in its financial record-keeping and reporting;

96 (8) A foundation which has in any of its fiscal years receipts and
97 earnings from investments totaling one hundred thousand dollars per
98 year or more, or a foundation established for the principal purpose of
99 coordinated emergency recovery that operated in response to an
100 eligible incident, as defined in section 4-37r, during the fiscal year or
101 with funds that exceeded one hundred thousand dollars in the
102 aggregate, shall have completed on its behalf for such fiscal year a full
103 audit of the books and accounts of the foundation. A foundation which
104 has receipts and earnings from investments totaling less than one
105 hundred thousand dollars in each fiscal year during any three of its
106 consecutive fiscal years beginning October 1, 1986, shall have

107 completed on its behalf for the third fiscal year in any such three-year
108 period a full audit of the books and accounts of the foundation, unless
109 such foundation was established for the principal purpose of
110 coordinated emergency recovery and had completed on its behalf such
111 an audit for any year in any such three-year period. For each fiscal year
112 in which an audit is not required pursuant to this subdivision financial
113 statements shall be provided by the foundation to the executive
114 authority of the state agency. Each audit under this subdivision of a
115 foundation established for The University of Connecticut shall be
116 conducted by the Auditors of Public Accounts in accordance with
117 generally accepted auditing standards. Each audit under this
118 subdivision of a foundation established for any other state agency shall
119 be conducted (A) by an independent certified public accountant or, if
120 requested by the state agency with the consent of the foundation, by
121 the Auditors of Public Accounts, and (B) in accordance with generally
122 accepted auditing standards. The audit report shall include financial
123 statements, a management letter and an audit opinion which address
124 the conformance of the operating procedures of the foundation with
125 the provisions of sections 4-37e to 4-37i, inclusive, as amended by this
126 act, and recommend any corrective actions needed to ensure such
127 conformance. Each audit report shall disclose the receipt or use by the
128 foundation of any public funds in violation of said sections or any
129 other provision of the general statutes. The foundation shall provide a
130 copy of each audit report completed pursuant to this subdivision to the
131 executive authority of the state agency and the Attorney General. Each
132 financial statement required under this subdivision shall include, for
133 the fiscal year to which the statement applies, the total receipts and
134 earnings from investments of the foundation and the amount and
135 purpose of each receipt of funds by the state agency from the
136 foundation. As used in this subdivision, "fiscal year" means any
137 twelve-month period adopted by a foundation as its accounting year;

138 (9) There shall be a written agreement between the state agency and
139 the foundation which (A) addresses any use by the foundation of the
140 agency's facilities and resources including, but not limited to, office

141 space, storage space, office furniture and equipment, utilities,
142 photocopying services, computer systems and the maintenance by the
143 state agency of the books and records of the foundation, provided any
144 such books and records maintained by the state agency shall not be
145 deemed to be public records and shall not be subject to disclosure
146 pursuant to the provisions of section 1-210, except any such books and
147 records maintained by The University of Connecticut shall be subject
148 to disclosure pursuant to the provisions of section 1-210, (B) provides
149 that the state agency shall have no liability for the obligations, acts or
150 omissions of the foundation, (C) requires the foundation to reimburse
151 the state agency for expenses the agency incurs as a result of
152 foundation operations, if the agency would not have otherwise
153 incurred such expenses, (D) in the case of foundations established for a
154 constituent unit of the state system of higher education or for a public
155 institution of higher education, requires the foundation to establish
156 and adhere to an investment policy and a spending policy that are
157 consistent with sections 45a-535 to 45a-535i, inclusive, and (E) provides
158 that if the foundation ceases to exist or ceases to be a foundation, as
159 defined in section 4-37e, as amended by this act, (i) the foundation
160 shall be prohibited from using the name of the state agency, (ii) the
161 records of the foundation, or copies of such records, shall be made
162 available to and may be retained by the state agency, provided any
163 such records or copies which are retained by [the] a state agency other
164 than The University of Connecticut shall not be deemed to be public
165 records and shall not be subject to disclosure pursuant to the
166 provisions of section 1-210, and (iii) there are procedures for the
167 disposition of the financial and other assets of the foundation. If the
168 state agency is a constituent unit, the board of trustees of the
169 constituent unit shall approve such agreement. If the state agency is a
170 public institution of higher education, the board of trustees of the
171 constituent unit which has jurisdiction over the institution shall
172 approve such agreement; and

173 (10) If the foundation is established for the principal purpose of
174 coordinated emergency recovery, the Department of Emergency

175 Services and Public Protection shall be deemed the state agency for
 176 purposes of this section, and the deputy commissioner of said
 177 department with jurisdiction over the Division of Emergency
 178 Management and Homeland Security shall be deemed the executive
 179 authority for purposes of this section.

180 Sec. 504. Section 4-37k of the general statutes is repealed and the
 181 following is substituted in lieu thereof (*Effective October 1, 2014*):

182 Notwithstanding any other provision of the general statutes, an
 183 agreement between a state agency and a foundation, as defined in
 184 section 4-37e, as amended by this act, shall not be deemed to be a
 185 contract for the performance of a governmental function within the
 186 meaning of section 1-218 unless such contract is between The
 187 University of Connecticut and such a foundation."

This act shall take effect as follows and shall amend the following sections:		
Sec. 501	<i>October 1, 2014</i>	New section
Sec. 502	<i>October 1, 2014</i>	4-37e
Sec. 503	<i>October 1, 2014</i>	4-37f
Sec. 504	<i>October 1, 2014</i>	4-37k